Supreme Court of California.

CARPENTER *vs.* ATHERTON.

1. The "specific contract law" of the state of California is valid and does not conflict with the Act of Congress of July 11, 1862, making Treasury notes lawful money and a legal tender in the payment of private debts.

2. It was held competent for the legislature to provide that judgment for the plaintiff shall be payable in the kind of money or currency specified in the contract or obligation on which it was rendered, and that execution shall follow the judgment in this particular.

The opinion of the court was delivered by

CURREY, J.—The defendant made and delivered to the plaintiff his contract in writing, bearing date the 2d of April, 1864, by which, for a valuable consideration, he promised to pay to the plaintiff the sum of five hundred dollars on demand, in United States gold coin. Some time afterwards the plaintiff duly demanded payment of the sum of money due on this contract, in the kind of currency specified therein. The defendant refused to pay in gold coin, but subsequently, and before this action was commenced, tendered and offered to pay to the plaintiff certain United States notes, amounting in the aggregate to the sum of the principal and interest due the plaintiff. The United States notes so tendered were issued under and in pursuance of the Act of Congress of the United States entitled "An Act to authorize an additional issue of United States notes, and for other purposes," approved July 11, 1862. By this act the notes so tendered were made lawful money and a legal tender in the payment of all debts, public and private, within the United States, except as therein otherwise provided.

The defendant, by his answer, pleaded the tender of these United States notes for the payment of the amount due, and brought the same into court with his answer, ready to be paid to the plaintiff.

The plaintiff demurred to the answer on the ground that it did not state facts sufficient to constitute a defence, specifying as causes of demurrer:

1st. That the United States notes tendered are not money, and the plaintiff was not nor is by law obliged to receive the same in payment of the sum of money due him.

2d. That by the contract on which the action was brought the

defendant promised to pay the sum of money due plaintiff in gold coin of the United States, and the defendant does not aver a tender of the amount due in such coin.

The demurrer was sustained, and at the same time leave was granted to the defendant to amend his answer, which he declined to do, whereupon the court ordered and adjudged that the plaintiff have and recover against the defendant the principal and interest due, and the costs of the action, specifying the amount thereof, payable in gold coin of the United States; and it was further ordered and adjudged that the plaintiff have execution to force the collection of such judgment, with the interest which might accrue thereon, and that such execution specify, direct, and provide that the judgment and all accruing interest thereon "shall be collectable only in gold coin of the United States."

The defendant has appealed from this judgment, which brings up the case to be considered upon certain alleged errors, that are assigned in a well-drawn bill of exceptions, presenting the whole case upon its real merits.

The exceptions taken to the rulings and judgment of the court raise the question as to the validity of the Act of the Legislature of this state passed on the 27th of April, 1863, commonly called the "Specific Contract Law," in so far as its provisions relate to the points involved in this controversy: Laws of 1863, p. 687.

The second section of this act provides that, "In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein." The third section of the act provides that the execution to be issued on such judgment shall state the kind of money or currency in which the judgment is payable, and shall require the sheriff to satisfy the same in the kind of money or currency in which it is made payable, and that the sheriff shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment-debtor, he shall refuse payment from any purchaser at such sale, in any other kind of money or currency than that specified in the execution.

It is a cardinal rule in the construction of statutes that every reasonable intendment is to be made in support of their validity:

Morris vs. *The People*, 3 Denio 381; *Ex parte McCollom*, 1 Cow. 564; *Fletcher* vs. *Peck*, 6 Cranch 87; *People* vs. *Supervisors of Orange*, 17 N. Y. Rep. 241. But whenever it is clear that the legislature has transcended its powers, in the passage of an act which is repugnant to paramount law, it is among the most important duties of the judicial authority to declare the invalidity of the act so passed: *Adams* vs. *Howe*, 14 Mass. 345; *Fletcher* vs. *Peck*, 6 Cranch 87.

By the laws of the land, the country is furnished with three kinds of money—gold, silver, and United States notes—as a medium of exchanges. Money, made by the coinage of gold or silver, is a legal tender as prescribed by law, in the discharge of obligations, which are to be satisfied by the payment of money, in general terms; and we have held in *Lick* vs. *Faulkner*, and in other cases, that the notes of the United States, issued by the authority of the laws of the National Legislature, are a lawful and authorized currency, and in that sense lawful money and a legal tender in the payment of private debts; but it does not follow that every kind or any kind of money which by law is a legal tender in the payment of debts may be tendered in satisfaction of every obligation capable of performance by the transfer and delivery of property in satisfaction of it.

In *Lick* vs. *Faulkner* we said, upon good authority, that gold and silver are commodities, the value of which is estimated by the value of other things, in the same manner as that of the latter is estimated by the value of gold and silver. This quality or characteristic of the precious metals is not destroyed by their division into parcels bearing the impress of the Mint and possessing a specific value, ascertained and regulated by positive law. If one agrees generally to pay or deliver to another a given number of dollars, he may perform his contract by the payment of the specified sum in any kind of dollars which are recognised as such and made a legal tender for the purpose by the law of the land; for by doing so he fulfils his engagement according to its letter; but if he contracts, for a valuable consideration, to pay his debt in a particular kind of money, his obligation cannot be discharged in accordance with his stipulation by payment in a different kind of money; and though by the unaided rules of the common law he could not be compelled to perform specifically that which he had promised, yet, in morals, his obligation to do so is in no degree diminished.

Courts of equity from an early period have exercised jurisdiction, enforcing the specific performance of contracts, for the reason that the courts of common law, though recognising the obligation of the parties to a contract to perform their respective parts of it according to its terms, could not afford this remedy to the party injured by the non-performance of the other. At law the party disappointed by the breach of the contract was compelled to be satisfied with money, as a substitute for the thing for which he had contracted, and to which he was in justice entitled.

The money recovered in such cases, by way of damages, was considered as a substantial equivalent for the injury sustained by the breach of the contract. But upon this subject Judge STORY says: "It is against conscience that a party should have a right of election whether he will perform his covenant or only pay damages for the breach of it:" Story on Eq. Jur. 717 a.

Contracts relating to real property embrace by far the most numerous instances in which the jurisdiction of a court of equity may be invoked to administer the remedy of specific performance. But this species of remedy has not been limited to the enforcement in terms of agreements relating to lands. It has been in many instances extended to enforcing specifically contracts relating to personal property, and also to the performance of personal acts, though in such cases peculiar circumstances must exist to call forth the remedial agency of the court. The reason assigned for the universal exercise of this jurisdiction as to contracts respecting lands and not in relation to agreements concerning personal property is not because of any distinction between realty and personalty, but because in the former case damages at law cannot be regarded as a complete and adequate remedy for the breach of the contract, while in the latter a compensation in damages is deemed commensurate with the injury sustained. But whenever a violation of a contract relating to personal property cannot be correctly estimated in damages, or whenever, from the nature of the contract, a specific execution of it is indispensable to justice, a court of equity will not refuse its aid: *Duff* vs. *Fisher*, 15 Cal. 381; Willard's Eq. Jur. 271, 280; *Fells* vs. *Reed*, 3 Vesey 70; *Sullivan* vs. *Tuck*, 1 Maryl. Ch. Decisions 59; *Waters* vs. *Howard*, Id. 112; *Barr* vs. *Lapsley*, 1 Wheat. 152; *Phillips* vs. *Berger*, 2 Barb. 608, and 8 Barb. 528; *Stuy-*

vesant vs. *The Mayor of New York*, 11 Paige 414, 427; Story's Eq. Jur., sections 712 to 720.

The man who contracts to sell and convey lands is under no greater obligation, morally, to perform his agreement than he who agrees for a valuable consideration received to deliver to the purchaser personal property which he has sold is to perform his. If there be any distinction between the two cases, let the learned casuist resolve it, for if on this point we are in error we need to be instructed.

The act of the legislature by authority of which the judgment in this case was rendered is remedial in its nature, affording to the party who may be justly entitled to the performance of the contract in terms the means of enforcing it. The right to its enforcement is consistent with good faith, and with the dictates of a scrupulous and exact justice. Then, is the legislature competent to provide for the creditor a remedy to compel his debtor to do what he has solemnly and deliberately bound himself to do? On this point there can be no doubt, unless the act under consideration is in derogation of the laws of Congress making United States notes lawful money and a legal tender in the payment of debts. Upon the solution of this question our judgment must necessarily depend.

Before a court, duly appreciating the measure of its duty, will declare an act of the legislature invalid, as contravening the laws of Congress, a case must be presented in which there can be no rational doubt (*Ex parte McCollom*, 1 Cow. 564); for it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered void: *Fletcher* vs. *Peck*, 6 Cranch 87.

It is insisted on the part of the appellant that, as the Acts of Congress making United States notes lawful money and a legal tender in the payment of private debts is the paramount law, therefore such currency is adequate for the discharge of all debts which are to be satisfied by the payment of money. This is so, as we have already observed, in respect to debts that are payable in money generally; but as to the contract, which is the foundation of the judgment in this case, it is more than a contract for the payment of money merely. It goes to the extent of defining by what specific act the contract shall be performed. By the admitted and settled rules of law, such a contract can be performed, according to the agreement of the parties, only by the

payment of the kind of money specified. Is there anything in law or morals opposed to such a contract? If not, what objection can there be to enforcing it in case its voluntary performance is refused? That a creditor may have uses for money of a particular kind, the Acts of Congress making United States notes lawful money and a legal tender in the payment of debts seem to have contemplated. He may have to pay duties on imports and debts beyond the territorial jurisdiction of the United States, and for these uses these Government notes are not a legal tender. Necessities of the kind suggested exist in commercial communities, where United States notes are the usual media of exchanges, as verified by every day's experience. The importer of merchandise must have gold and silver money to pay the duties imposed by law on his importations. With such means only can he discharge his pecuniary obligations to the Government. He must have metallic money for the purchase of such merchandise, because the paper currency of the Government will not answer his purpose abroad. The importation of goods from foreign countries is a lawful trade, which Congress, under the Constitution, may regulate and has from time to time regulated. By what means is the merchant, who is engaged in this species of trade, to provide for his necessities—that is, for the payment of his debts abroad and his duties on imports at home—unless by securing payment from his debtors in the kind of money which he needs and without which he must abandon the business in which he is engaged? Perhaps it will be answered that he must sell his goods for ready money, and not upon a credit, and thus secure a price in gold and silver; and the purchaser from him must in his turn also sell for like ready money in order to be furnished with the means to pay the importer; and the consumer must also provide himself with the same kind of money, let it be derived from what source of industry it may, to pay for the goods he may need for consumption.

If the owner of property may sell the same for metallic money, to be paid concurrently with the sale and delivery of it, we can see no reason why he cannot sell for the same kind of money to be paid at a future day. A sale on credit is, by the customs and laws of trade, recognised as legitimate, and is deemed to be consistent with good conscience and sound morals.

It is sometimes argued that the act of the legislature under consideration discriminates invidiously, to the discrediting of

United States notes. We are unable to perceive wherein. There is certainly nothing in the act itself that can justify any such inference. If such a charge were made against the Act of Congress making United States notes lawful money and a legal tender in the payment of certain debts, it might be maintained with more seeming plausibility. Congress itself has limited the uses to which the notes can be applied, and has provided expressly that in certain cases gold and silver money shall be used within the United States for the discharge of pecuniary obligations, and thus, by implication, at least, has recognised an existing necessity for the employment of gold and silver money for the excepted uses. But even in this we cannot perceive that any unjust discrimination is made between the different kinds of money. With the people of some countries trade can be carried on by the use of silver money with greater convenience and advantage than with gold coin; yet it cannot be said that the merchant who furnishes himself with silver for his purposes thereby discriminates to the prejudice of gold. The argument that the act in question unjustly distinguishes between metallic and paper money, if valid as an objection to contracts for the direct payment of a particular kind of money, upon a credit given, is equally so as to sales made for the same kind of money, paid at the time. It would be illogical to hold that the effect in the one case is more or less detrimental to the credit of United States notes than in the other. Arguments of the character which we have here noticed are too obviously fallacious to require even the attention which we have devoted to their refutation.

Again. The man of means, actuated by patriotic motives to aid the Government, or for the purpose of legitimate investment, may desire to accumulate United States notes, with the view of exchanging them for bonds of the Government payable within the time and bearing the rate of interest specified and provided in the Act of Congress. Is there, or can there be, any good reason why he may not provide for the desired supply by securing payment from his debtors in the kind of money that would serve his purpose? Is not the end which he seeks lawful, and are not the means legitimate to the end?

The Acts of Congress relating to the National currency, comprehending all kinds of money, and the various provisions of those acts, must be considered and construed *in pari materia*. By this course it will be readily and at once perceived that while

United States notes are by the sovereign behest made lawful money and a legal tender in the payment of debts, except in the instances specified, gold and silver money is equally, by force of positive law, a legal tender in the payment of all debts, and is also recognised as an indispensable currency for purposes to which Government notes cannot be applied; and therefore the inference is logical, if not inevitable, that Congress did not design that these acts should interfere to prevent men from contracting for any particular kind of money which they might need.

Whatever, in the estimation of men engaged in monetary transactions, may be the difference in value between gold and silver money and the paper currency of the Government of the same denominations, we cannot say judicially that a gold or silver dollar is of greater or less value than a United States note of the same denomination, and we doubt if a case could be presented to a court of justice which would authorize evidence of a difference in the value of the two kinds of money. A court would be placed in an anomalous and absurd predicament in listening and giving heed to evidence designed to establish as a fact that one dollar is worth more or less than another: *Woods* vs. *Bullens*, 6 Allen's R. 516.

By an Act of the Congress of the United States, passed in 1853, silver money, consisting of half dollars, quarter dollars, dimes, and half dimes, issued in accordance with the standard of that act, was made a legal tender in the payment of debts, in sums not exceeding five dollars. Now, if A. should loan to B. one thousand half dollars, coined under the Act of 1853, and B. should in consideration thereof contract with A. to pay the debt so created in like silver coin, would not a tender of the same kind of money in payment of the debt be a legal tender? No one, we apprehend, who understands the import of the word *tender*, would answer otherwise than in the affirmative. Then, if the debtor in such case could discharge his obligation by a voluntary performance of his promise, on what just principle could he escape it if he were so determined? The duties of the obligor and obligee in such cases must be reciprocal, and they should be commensurable. In the nature of things, that which it is lawful to tender, under the contract supposed, on the one hand, it is lawful to demand on the other: 8 Barb. 528; 1 Sim. & Stu. 174 and 607; 2 Edw. Ch. R. 531; Story's Eq. Jur. sec. 723.

The act of the legislature under consideration is purely reme-

dial in its nature. It creates no new right in the abstract. It does no more than add to the cases in which it is competent for the courts to enforce the execution of contracts specifically, and provides the means by which this can be done. In this, the act is in harmony with the doctrines of equity jurisprudence relating to kindred subjects, and at the same time it in no just sense contravenes the laws of Congress making United States notes lawful money and a legal tender in the payment of debts.

It is alleged, on the part of the appellant, that the court erred in determining by judgment that the costs and disbursements of the action must also be paid in gold coin.

The second section of the act provides that judgment for the plaintiff may follow the contract or obligation and be made payable in the kind of money or currency specified therein. The plaintiff was entitled to recover his costs, which became a component part of the judgment and payable in the kind of money specified therein.

The judgment is affirmed.

We concur: RHODES, J., SHAFTER, J.

1. The Act of Congress of the 25th of February, 1862 (U. S. Stat. at Large, 1862, ch. 32), provides that the Treasury notes therein authorized to be issued (commonly called Greenbacks), "shall be lawful money and a legal tender in payment of all debts, public and *private*, within the United States, except duties on imports and interest as aforesaid," that is, interest on United States securities.

The constitutional power of Congress to pass this law, that is, to issue Treasury notes, and invest them, when issued, with the properties and attributes of money, and to make them a legal tender in the payment of debts, including not only those due from the Government to individuals, but those also due from one individual to another, has been considered and determined in the highest courts of several of the states.

The validity of this act in this respect was sustained by the Court of Appeals of the state of New York in the cases (which were considered together) of The Metropolitan Bank *vs.* Van Dyck, Superintendent of the Bank Department, and Meyer *vs.* Roosevelt, 13 E. P. Smith (not yet published).

A majority of the court were of the opinion that the issue of such notes was a legitimate and appropriate means of carrying into execution the specific and express power, *to borrow money on the credit of the United States.*

The judgments of Justices EMOTT and WM. B. WRIGHT rest upon substantially this basis; and are masterly exhibitions of research, learning, and compact judicial logic and reasoning.

The validity of the act has also been expressly upheld by the Supreme Court of the state of Iowa, in the very recent case of Hintrager *vs.* Bates, December Term, 1864 (17 Iowa Rep.—not yet published), as it impliedly was in the previous cases of Warnebold *vs.* Schlict-

ing and Troutman *vs.* Gowing, reported 16 Iowa Reports. The last case was substantially like Meyer *vs.* Roosevelt, *supra*, except that the note was payable in *gold*, and it was held that the creditor was bound, in equity as well as at law, to accept Treasury notes and discharge his mortgage.

The constitutionality of the act was likewise affirmed by the Supreme Court of California in the case of Lick *vs.* Faulkner, decided at the July Term, 1864,—the court locating the authority among the *implied powers* of the General Government, and regarding it as incidental to the express powers to raise armies, to defend against invasions, and to suppress insurrections and rebellions. The court did not deny, however, that the power might be deduced (as it was by the Court of Appeals of New York) from the specific power to borrow money, but preferred the view above indicated. We have read the opinion of Mr. Justice CURREY with much satisfaction, and only regret that our space will not permit us to publish it.

In Reynolds *vs.* The State Bank, 1 Am. Law Reg. N. S. 669, the Supreme Court of Indiana, doubting if not denying the constitutional power of Congress to annex the legal tender clause, nevertheless decided that they would sustain the law until the Federal courts should determine otherwise. But in Thayer *vs.* Hedges, May Term, 1864 (judging from the abstract of Judge REDFIELD, Am. Law Reg., January, 1865, p. 163, note to Warren *vs.* Paul), this court seem to have denied the power of Congress to declare paper or Treasury notes a legal tender.

No court of the highest resort in any state (unless in the case last mentioned) has yet pronounced against the validity of the Act of Congress in the particulars under consideration. The decisions have uniformly sustained it.

Still, the question cannot be considered as definitely and authoritatively settled until it shall have been decided by the ultimate arbiter of all such questions—the Supreme Court of the United States.

This high tribunal, it cannot be doubted, will decide it wisely and well. Precedent there is none. Narrow rules and technical constructions have here no place. Such a question demands wise and enlarged statesmanship, as well as, if not more than, mere judicial learning.

The author of that act, or of the policy which it embodies, is now the Chief Justice of the court, and understands the question in all of its relations and bearings. After the lapse of three years, it is perhaps not premature to apply to him, in view of the wondrous results which this policy has achieved, the splendid eulogium of WEBSTER upon the genius and labors of ALEXANDER HAMILTON:—"He smote the rock of the National Resources, and abundant streams of revenue gushed forth. He touched the dead corpse of the Public Credit, and it rose upon its feet!"

And any court with a just sense of its duty and responsibility, will hesitate long, and distrust its own wisdom much, before it deliberately overthrows an act founded in imperative necessity, which has worked so well, and which cannot be overthrown without entailing general disaster and universal financial ruin alike upon Government and People.

Further, as bearing upon the question:—REDFIELD'S valuable note to Warren *vs.* Paul, *ubi supra;* Wood *vs.* Bullens, 6 Allen (Mass.) 516; Schollenberger *vs.* Brinton, 3 Am. Law Reg. N. S. 591; Schoenberger *vs.* Watts, 1 Am. Law Reg. N. S. 553, referred to *infra;* Bank of Commerce *vs.* N. Y.

City, 2 Black 620 (1862),—reversing s. c., 26 N. Y. 163,—in which it was held by the Supreme Court of the United States, that a *state* tax upon stock issued under the same Act of Congress (February 25, 1862) was a restriction upon the constitutional power of the General Government to borrow money, and was therefore invalid. And see further on this point, People *vs.* Bank of Commonwealth, 23 N. Y. 192; s. c., 1 Am. Law Reg. N. S. 81; People *vs.* Commissioners, 2 Am. Law Reg. N. S. and note of Prof. DWIGHT, and 3 Id. 535 and note.

II. At the same term at which the Supreme Court of California decided the case of Lick *vs.* Faulkner, *supra*, sustaining the validity of Treasury notes as a legal tender, they also decided the case of Carpenter *vs.* Atherton, above given. We are indebted to the courtesy of the judges, and to a member of the bar, for a copy, and gladly publish it, being a case of the first impression and involving important principles.

The opinion of Mr. Justice CURREY was concurred in by the four judges taking part in the decision. Mr. Justice SAWYER delivered a separate concurring opinion. Mr. Chief Justice SANDERSON declined to express a judicial opinion, having been a member of the legislature which passed the act, if not the author of it.

The reasons in favor of the view taken are very forcibly stated in the opinion, and it has received the high sanction of Judge REDFIELD. (Note to Warren *vs.* Paul, *supra.*)

Still, it seems to the writer difficult —he does not venture to say impossible—to reconcile these two decisions, the one sustaining the validity of the Act of Congress which declares that Treasury notes are a legal tender for *all private* debts, the other the validity of the specific contract law of the state which declares that for certain private debts these notes are *not* a legal tender. Gold is probably to a large extent the circulating medium in that state. There is a great difference in the market between the value of a dollar in coin and a dollar in Treasury notes. If coin was loaned, or a transaction based upon gold, it was uncertain, prior to this decision, whether the creditor might not legally be compelled to receive in payment Treasury notes. This uncertainty would doubtless tie up much capital and create much embarrassment. And if it can be done safely and consistently, we should be glad to approve a course of decision which harmonizes the interests of the state and those of the United States.

The writer only intends to say that he entertains grave doubts whether the Act of Congress as it is now framed, and the specific contract law in the broad and general terms in which it is couched, can both stand.

It seems quite clear that the decision in Carpenter *vs.* Atherton conflicts with the reasoning and principles laid down in other well-considered cases.

Some of these we briefly notice, as illustrating the general subject:—

Thus, in Shoenberger *vs.* Watts, decided by the District Court for the city and county of Philadelphia, reported in 1 Am. Law Reg. N. S. 553, the defendants, some years prior to the passage of the Act of Congress authorizing the issue of Treasury notes, executed a bond to the plaintiff, conditioned for the payment of $28,000 "in specie, current gold and silver money of the United States." The bond also provided "that no existing law or laws, and no laws which may be hereafter enacted, shall operate, or be construed as operating, to allow payment to be made in any other money than that above designated;" "the said obligors expressly waiving the benefit derived or to be derived from such law or laws." Judgment was entered on this bond and ex-

ecution issued, in which the sheriff was required to levy the debt and interest, following the language of the bond, "in specie, current gold and silver money." The execution was set aside, on motion, as irregular, the court holding that a final judgment at law is necessarily for *lawful* money, and that the debtor had the legal right to pay it in any money which the law has made a legal tender.

The able opinion of Judge HARE, in this case, assumes the validity of the Act of Congress, making Treasury notes a legal tender. His argument may be thus condensed:—

1. Congress has the power "to coin money and regulate the value thereof" —to say what shall be money, and the rate at which it shall be taken. This is an attribute of sovereignty. Congress has exercised this power. It has declared that a dollar in Treasury notes is legally equivalent to a dollar in gold. The law does not discriminate between them as respects the payment of private debts; and he is of the opinion that it is not "competent for the citizen to discriminate in a matter where the law of the land has refused to distinguish, to make a bargain, excluding those with whom he contracts from a means of payment which the law has decided shall be open to and available for all, and encumber them with a debt of a new and special nature, not capable of being discharged in the way in which ordinary debts are by law payable."

2. In relation to the provision in the bond waiving the benefit of future laws allowing payment in anything but gold and silver, the court argued that parties cannot, by private contract or stipulation, dispense with, renounce the benefit of, or control laws founded upon public policy, and in which the whole community is interested.

3. The invariable course is to render judgments for so many dollars lawful money. Thus, a contract may be for the delivery of grain, but the judgment on it is not on that account for grain, but for as much money as the grain was worth. So, a judgment on a contract for doubloons would be not for doubloons but for their value.

In Wood *vs.* Bullens, 6 Allen (Mass.) 516, it was decided that the plaintiff in an action on a promissory note payable in *specie*, can only recover judgment for the amount of the face of the note and interest thereon, although he offers to prove that at the time when payment of the note was demanded, specie was worth a premium above par. And note reasoning of the court, and see similar case of Warnebold *vs.* Schlicting, 16 Iowa, and the elaborate opinion of WRIGHT, C. J.

Mr. Justice AGNEW, of the Supreme Court of Pennsylvania, decided in Schollenberger *vs.* Brinton, that where ground-rent was payable in "lawful *silver* money of the United States," it might, like other debts, be discharged in legal tender notes: 3 Am. Law Reg. N. S. 591. This case, however, is now before the same court *in Banc*, and chiefly involves the preliminary question whether or not the principal of a ground-rent is a *debt*.

"A Treasury note," says Mr. Justice WRIGHT in Meyer *vs.* Roosevelt, *supra*, "of the denomination of ten dollars, is *legally* as valuable as a coined eagle."

Without the aid of a specific contract law these cases seem to establish that a party cannot by private contract make a difference between *coin* and *tender notes*. A debt payable in one may be discharged in the other. If this is so, and if this results from the paramount authority and effect of the law of Congress, the question is, can a *state* legislature authorize a different result?

And this presents two kindred considerations: 1st. Whether the letter as well as the policy of the Act of Congress is not violated by allowing parties to discriminate between that which the

law has declared to be *legally identical*, so far as the payment of private debts is concerned; and, 2d. Whether it is competent for the debtor, if such a public policy does exist, to control the same by private contract? That it is not, see the cases above cited, and particularly Warnebold *vs.* Schlicting, 16 Iowa; Shoenberger *vs.* Watts, *supra;* Kneetle *vs.* Newcomb, 22 N. Y. (8 Smith) 249, and the very interesting opinion of DENIO, J.

This distinguished judge there says: "I do not think it is within the power of parties, by their contracts, to give any other effect to judgments and executions than that which the law attributes to them. Could a person *when* contracting a debt, agree, for instance, that the act abolishing imprisonment for debt should not apply to any judgment which might be recovered on that contract; or that on such judgment there should be no right in the debtor to redeem any land that might be sold on execution, or that he should not be discharged under any insolvent act? Clearly, this could not be done; and upon the same principle, I think, the debtor could not, *when* contracting the debt, agree that exempt household property might be taken on the execution. The law does not permit its process to be used to accomplish ends which its policy forbids, though the parties may, by prospective contract, agree to such use." And see, to same effect, Levicks *vs.* Walker, 9 Am. Law Reg. 112, but compare with 31 Pa. St. Rep. 225; 24 Id. 426; 23 Id. 93, 94; 6 Watts 40.

After all, the subject is one of great intrinsic difficulty. It is easy to put cases, not unlikely to arise, where the doctrine that coin and Treasury notes are for all purposes *legally identical*, and that a judgment can only be for so many dollars payable in whatever the law has made a legal tender, at the option of the debtor, would work positive injustice where there exists a great difference in their market value. Suppose I leave $1000 in gold coin on special deposit, and my bailee converts it. Again; suppose I loan $1000 in gold, and the borrower agrees to return it in kind the next day, or the next month. Now, in either case (and others might be put), a judgment for $1000, which might be and which it is morally certain would be paid in tender-notes, would work a manifest wrong, and one from which there is no escape, unless 1st. It affords ground for relief in equity; or, 2d. Unless statutes like the one in California are valid. On the other hand, suppose I loan $1000 in tender-notes and receive the borrower's note for $1000 in *gold*, would the courts of California enforce this under the broad language of their specific contract law? Would it be usurious? Would there be a partial want of consideration? If such a note could be enforced in full and in gold, the present market difference continuing to the maturity of the note, this would be as unjust as in the cases above supposed.

Still, if California may pass such a law, so may every other state. And when we consider the power of capital, the power of the creditor, that he, as between him and the debtor, is essentially "master of the situation," we cannot resist the apprehension that the practical effect of the general adoption of such laws and of sustaining them, will be to discredit the National currency and to clothe the lender and creditor with a new and formidable power over the borrower and debtor. Equitable cases, like those above specified, should be excepted from the legal tender clause. To avoid conflict, the remedy should come from *Congress* rather than the states. This suggestion is perhaps worthy of the attention of the National Legislature.

J. F. D.